

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD-400 (REV. 01-09)

<b>OAL FILE NUMBERS</b>	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2010-0929-01E</b>
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Department of Mental Health			AGENCY FILE NUMBER (if any)

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
<b>OAL USE ONLY</b>	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Stage II Screening Guidelines for Sexually Violent Predators		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
<b>SECTION(S) AFFECTED</b> (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT 4001, 4011, 4015	
		AMEND 4000	
TITLE(S) 9		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Stephanie Fields		TELEPHONE NUMBER (916) 651-1446	FAX NUMBER (Optional) (916) 651-3852
		E-MAIL ADDRESS (Optional) Stephanie.Fields@DMH.CA.GOV	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 9-23-10
TYPED NAME AND TITLE OF SIGNATORY STEPHEN W. MAYBERG, PH.D., DIRECTOR, DEPARTMENT OF MENTAL HEALTH	

For use by Office of Administrative Law (OAL) only

**DELEGATION ORDER**

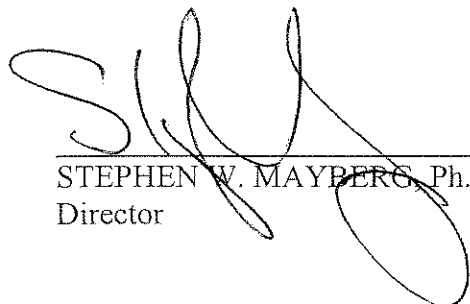
MH 360 (revised 8/01)



Subject	
Notice Publication/Regulations Submission – STD. 400	
Originating Unit	Reference
Office of Regulations	Government Code Section 11343

I, Stephen W. Mayberg, Ph.D., am Director of the California Department of Mental Health and am hereby empowered and required to review and adopt regulations and approve rulemaking calendars. I hereby delegate to Stanley Bajorin, Deputy Director, Administrative Services Division, California Department of Mental Health, the authority to review and approve Standard Form 400, Notice Publication/Regulations Submission, submitted with rulemaking files by the Department of Mental Health.

6-9-08  
Date

  
STEPHEN W. MAYBERG, Ph.D.  
Director

The authority hereby delegated may not be sub-delegated. I understand and accept this delegation.

6-9-08  
Date

  
STANLEY BAJORIN  
Deputy Director  
Administrative Services Division

## TITLE 9. REHABILITATIVE AND DEVELOPMENTAL SERVICES

### DIVISION 1. DEPARTMENT OF MENTAL HEALTH

#### CHAPTER 15. ASSESSMENT OF SEXUALLY VIOLENT PREDATORS

**Amend Section 4000 as follows:**

##### **§ 4000. Application of Chapter**

This chapter applies to ~~evaluators performing an assessment~~ screenings or evaluations used to determine whether a person is a sexually violent predator pursuant to Welfare and Institutions Code § 6600 et. seq.

**Authority:** Welfare and Institutions Code Sections 4005.1 and 4027 4101

**Reference:** Welfare and Institutions Code Sections 6600, 6601.

**Adopt Section 4001 as follows:**

##### **§ 4001. Definitions**

(a) As used in this chapter the term “Screening” shall mean an administrative or clinical screening performed pursuant to Welfare and Institutions Code Section 6601(b).

(b) As used in this chapter the term “Evaluation” shall mean an evaluation performed pursuant to Welfare and Institutions Code Section 6601(c).

(c) As used in this chapter the term “Individual” shall mean a person as defined in Welfare and Institutions Code Section 6601(a)(1).

**Authority:** Welfare and Institutions Code Sections 4005.1 and 4101

**Reference:** Welfare and Institutions Code Sections 6600 and 6601.

**Adopt Section 4011 as follows:**

##### **§ 4011. Screening Designation**

The Department of Mental Health may accept designation in whole or in part from the California Department of Corrections and Rehabilitation of the function to conduct screenings of individuals pursuant to Welfare and Institutions Code Section 6601(b).

**Authority:** Welfare and Institutions Code Sections 4005.1 and 4101

**Reference:** Welfare and Institutions Code Sections 6600, 6601.

**Adopt Section 4015 as follows:**

**§ 4015. Screening Procedures**

(a) A screening shall include a determination of the existence of a conviction for a sexually violent predatory offense as set forth in Welfare and Institutions Code Section 6600(b).

(b) A screening shall be performed by an administrative or clinical staff member employed by, or a non-state employee contracting with, the California Department of Corrections and Rehabilitation or the California Department of Mental Health.

(c) A screening conducted pursuant to Welfare and Institutions Code Section 6601(b) shall include at a minimum the following criteria:

1. The individual's social, criminal or institutional history.
2. Whether the individual's criminal offense has not been adjudicated.
3. Whether the individual's parole is in revoked status or otherwise revoked.
4. Whether the individual referred for evaluation is located in the state of California.
5. Whether the individual's release date is beyond nine months, including date changes.
6. Whether the individual's parole is likely to expire prior to the completion of the screening process and whether the individual's Controlling Discharge Date allows sufficient time for full evaluation.
7. Whether the individual was released from custody prior to the completion of the screening process.
8. Whether the individual is serving an indeterminate sentence.
9. Whether the individual has a current petition for civil commitment pending.
10. Whether the basis for a prior negative finding or the status of the individual's mental disorder or mental illness has changed since a prior screening or evaluation.
11. In the case of first-time referrals and re-referrals, whether the individual's crime or act is a qualifying offense.
12. In the case of first-time referrals and re-referrals, whether the individual's crime or act supports a likelihood of sexually reoffending in a predatory manner.

(d) When a clinical screen is performed, the screener, according to his or her professional judgment, shall apply the provisions of subdivision (c) of this section where applicable and tests or instruments along with other static and dynamic risk factors when conducting the screening. Such tests, instruments and risk factors must have gained professional recognition or acceptance in the field of diagnosing, evaluating or treating sexual offenders and be appropriate to the particular patient and applied on a case-by-case basis. The term "professional recognition or acceptance" as used in this section means that the test, instrument or risk factor has undergone peer review by a conference, committee or journal of a professional organization in the fields of psychology or psychiatry, including,

but not limited to, the American Psychological Association, the American Psychiatric Association, and the Association for the Treatment of Sexual Abusers.

(e) The Department of Mental Health shall maintain its own records documenting the screenings it has performed in accordance with the provisions of this chapter.

**Authority:** Welfare and Institutions Code Sections 4005.1 and 4101

**Reference:** Welfare and Institutions Code Sections 6600, 6601.

## FINDING OF EMERGENCY

### A. Department of Mental Health Finding That Emergency Regulatory Action Is Necessary

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1.

### B. Description of Specific Facts Which Constitute the Emergency

#### The Necessity for the Proposed Regulations

Welfare and Institutions Code Section 6601 provides for the process under which an individual who is in custody under the jurisdiction of the California Department of Corrections and Rehabilitation (CDCR) may be screened and fully evaluated as a potential sexually violent predator. Pursuant to Section 6601, the individual shall be screened by CDCR and the Board of Parole Hearings based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal and institutional history. Such screening shall be conducted in accordance with **a structured screening instrument developed and updated by the Department of Mental Health (DMH)** in consultation with CDCR. If as a result of this screening it is determined that the individual is likely to be a sexually violent predator, then CDCR shall refer the individual to DMH for a full evaluation in accordance with DMH's standardized assessment protocol.

On or about July 16, 2010, Chris Johnson with the law firm of Shook, Hardy & Bacon filed a petition with the Office of Administrative Law (OAL) challenging as underground regulations DMH's Level II Screening Guidelines (Guidelines). The Guidelines are contained in the structured screening instrument developed and updated by DMH as required by Welfare and Institutions Code Section 6601 (b). On August 9, 2010, the OAL contacted DMH with questions regarding the challenged Guidelines. Although DMH believes that the Guidelines are proper and valid, DMH is seeking to enact proposed emergency regulations to ensure DMH's and CDCR's continued ability to apply the appropriate screening instrument to screen and evaluate potential sexually violent predators, and avoid future potential road-blocks to such important screenings and evaluations. The proposed regulations will implement, interpret, or make specific Welfare and Institutions Code Section 6601 (b) by spelling out in regulations the criteria, terms and provisions of the structured screening instrument referenced therein.

## The Finding of Emergency

DMH finds that the proposed regulations are necessary to address an emergency. An emergency is “a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.” Government Code Section 11342.545. Any disruption or prevention of DMH’s and CDCR’s ability to screen and evaluate potential sexually violent predators will create serious harm to public peace, health, safety, and general welfare. Such disruption and prevention could occur from the OAL finding that the challenged Guidelines constitute underground regulations, resulting in a court enjoining CDCR and DMH from properly applying the Guidelines in the screening of potential sexually violent predators. Such disruption or prevention would delay the proper screening and evaluation of potential sexually violent predators, and could potentially cause the parole or release into the community of individuals who are potential sexually violent predators. Appropriate regulations must be enacted immediately to ensure the continued ability to apply the appropriate screening instrument to screen and evaluate potential sexually violent predators to protect public peace, health, safety and general welfare.

### C. Authority and Reference Citations

Authority: Welfare and Institutions Code Sections 4005.1 and 4101

Reference: Welfare and Institutions Code Section 6601 (b)

### D. Informative Digest and Policy Statement Overview

#### Policy Statement

The objective of the proposed action is to implement, interpret, or make specific Welfare and Institutions Code Section 6601 (b) by spelling out in regulations the criteria, terms and provisions of the structured screening instrument referenced therein.

#### Existing Law

Welfare and Institutions Code Section 6601 provides for the process under which an individual who is in custody under the jurisdiction of the California Department of Corrections and Rehabilitation (CDCR) may be screened and fully evaluated as a potential sexually violent predator. Pursuant to subsection (b) of Section 6601, the individual shall be screened by CDCR and the Board of Parole Hearings based on whether the person has committed a sexually violent predatory offense and on a review of the person’s social, criminal and institutional history. Such screening shall be conducted in accordance with a structured screening instrument developed and updated by the Department of Mental Health (DMH) in consultation with CDCR. If as a result of this screening it is determined that the individual is likely to be a sexually violent predator, then CDCR shall refer the individual to DMH for a full evaluation in accordance with DMH’s standardized assessment protocol.

## E. Summary of Proposed New Regulations

### Section 4000

Section 4000 is being amended to state that Title 9, Division 1, Chapter 15 applies to screenings or evaluations pursuant to Welfare and Institutions Code Section 6600 et seq.

### Section 4001

Section 4001 gives definitions for the terms "Screening," "Evaluation" and "Individual" as used in Title 9, Division 1, Chapter 15.

### Section 4010

Section 4010 states that the Department of Mental Health may accept a designation from the Department of Corrections and Rehabilitation to conduct screenings of individuals in accordance with Welfare and Institutions Code Section 6601(b).

### Section 4015

Section 4015 subpart (a) requires that a screening include a determination of qualifying offenses pursuant to Welfare and Institutions Code Section 6600(b). Subpart (b) requires that screenings be performed by administrative or clinical staff or a clinical staff employee, or a non-state employee contracting either with DMH or CDCR. Subpart (c) sets forth minimum criteria for evaluators to include in their screening. Subpart (d) sets forth the responsibilities of evaluators, according to their professional judgment, to apply tests or instruments, along with other status and dynamic risk factors that are appropriate to the particular patient on a case-by-case basis. Subpart (e) sets forth the requirement that DMH maintain its own records documenting the screenings performed pursuant to this chapter.

## F. Technical, Theoretical, and Empirical Study or Report

None

## G. Determinations

The Substantial Difference from Existing Comparable Federal Regulations or Statute.  
None.

Mandates on Local Agencies or School Districts. None.



Mandate Requires State Reimbursement Pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. None.

Costs to Any Local Agency or School District that Requires Reimbursement Pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. None.

Non-discretionary Costs or Savings Imposed on Local Agencies. None.

Costs or Savings to Any State Agency. None.

Costs or Savings in Federal Funding to the State. None.

Costs or Savings to Individuals or Businesses. None.